

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY AUGUST 19, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 414

Introduced by Senator Jackson

(Principal coauthor: Assembly Member Williams)

February 25, 2015

An act to amend Sections 8670.12, 8670.13, 8670.28, and 8670.67.5 of, and to add Sections ~~8670.11 and 8670.13.3~~ *8670.11, 8670.13.3, and 8670.55.1* to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

SB 414, as amended, Jackson. Oil spill response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of

using commercial fishermen and other mariners for oil spill containment and cleanup.

This bill would require the administrator, in cooperation with the United States Coast Guard, ~~to the extent possible,~~ to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. ~~The bill would require the administrator to develop and implement regulations and guidelines requiring operators to allow rapid response to an oil spill by vessels of opportunity and provide for the means for them to participate in regularly scheduled emergency drills, equipment deployment exercises, and training. The bill would require the administrator, on or before July 1, 2016, January 1, 2017, to submit to the Legislature a report assessing, among other things, assessing the best achievable technology of equipment for oil spill prevention and response, including an independent vessel traffic risk assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports, as provided, prevention, preparedness, and response and to update regulations based on the report before July 1, 2017. governing the adequacy of oil spill contingency plans before July 1, 2018. The bill would require the administrator to direct the Harbor Safety Committees for various regions to assess, among other things, the presence and capability of tugs within their respective regions of responsibility to provide emergency towing of tank and nontank vessels to arrest their drift or guide emergency transit.~~

(2) The act requires the administrator to study the use and effects of methods used to respond to oil spills and to periodically update the study to ensure the best achievable protection from the use of those methods.

This bill would require the ~~administrator to update the California Dispersant Plan by January 1, 2017, and,~~ administrator, in conducting the study and updates, to consult current peer-reviewed published scientific literature. *The bill would require the administrator, by May 1, 2016, to request that the federal California Dispersant Plan be updated, as provided, and to provide support and assistance in that regard.*

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills.

This bill would require the administrator, if dispersants are used in response to an oil spill, to submit to the Legislature a written ~~justification~~

~~for~~ notification of, and a written justification for, the use of dispersants and a report on the effectiveness of the dispersants used, as provided.

(4) Existing law establishes the Oil Spill Technical Advisory Committee and requires the committee to provide recommendations to, among other entities, the administrator on the implementation of the act.

This bill would require the committee to convene a taskforce to evaluate the feasibility of using vessels of opportunity for oil spill response. The bill would require the taskforce to provide recommendations to the administrator and the Legislature on whether vessels of opportunity should be included in oil spill response planning.

(4) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

~~This bill would provide eliminate that the above reduction in the penalty for spills, including inland spills, of greater than 500 gallons is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill. the amount of oil recovered and properly disposed of.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8670.11 is added to the Government
2 Code, to read:

3 8670.11. In addition to Section 8670.10, the administrator, in
4 cooperation with the United States Coast Guard, ~~to the extent~~
5 ~~possible~~, shall establish a schedule of drills and exercises required
6 pursuant to Section 155.4052 of Title 33 of the Code of Federal
7 Regulations. The administrator shall make publicly available the
8 established schedule.

9 SEC. 2. Section 8670.12 of the Government Code is amended
10 to read:

11 8670.12. (a) The administrator shall conduct studies and
12 evaluations necessary for improving oil spill response, containment,
13 and cleanup and oil spill wildlife rehabilitation in waters of the
14 state and oil transportation systems. The administrator may expend

1 moneys from the Oil Spill Prevention and Administration Fund
2 created pursuant to Section 8670.38, enter into consultation
3 agreements, and acquire necessary equipment and services for the
4 purpose of carrying out these studies and evaluations.

5 (b) The administrator shall, consulting current peer-reviewed
6 published scientific literature, study the use and effects of
7 dispersants, incineration, bioremediation, and any other methods
8 used to respond to a spill and, by ~~January 1, 2017~~, *update May 1,*
9 *2016, request that the federal California Dispersant Plan. Plan be*
10 *updated pursuant to subdivision (d).* The study ~~and plan~~ shall
11 periodically be updated by the administrator, consulting current
12 peer-reviewed published scientific literature, to ensure the best
13 achievable protection from the use of those methods. Based upon
14 substantial evidence in the record, the administrator may determine
15 in individual cases that best achievable protection is provided by
16 establishing requirements that provide the greatest degree of
17 protection achievable without imposing costs that significantly
18 outweigh the incremental protection that would otherwise be
19 provided. The studies shall do all of the following:

20 (1) Evaluate the effectiveness of dispersants and other chemical,
21 bioremediation, and biological agents in oil spill response under
22 varying environmental conditions.

23 (2) Evaluate potential adverse impacts on the environment and
24 public health including, but not limited to, adverse toxic impacts
25 on water quality, fisheries, and wildlife with consideration to
26 bioaccumulation and synergistic impacts, and the potential for
27 human exposure, including skin contact and consumption of
28 contaminated seafood.

29 (3) Recommend appropriate uses and limitations on the use of
30 dispersants and other chemical, bioremediation, and biological
31 agents to ensure they are used only in situations where the
32 administrator determines they are effective and safe.

33 (c) The studies shall be performed with consideration of *current*
34 *peer-reviewed published scientific literature and* any studies
35 performed by federal, state, and international entities. The
36 administrator may enter into contracts for the studies.

37 (d) *The administrator shall support the federal Regional*
38 *Response Team, as described in Section 300.115 of Title 40 of the*
39 *Code of Federal Regulations, in the development, and shall request*
40 *regular updates, of plans and procedures for use of dispersants*

1 *and other chemical agents in California. The administrator's*
2 *assistance may include, but is not limited to, providing the federal*
3 *Regional Response Team with current peer-reviewed published*
4 *scientific literature, and risk and consequence analysis.*

5 SEC. 3. Section 8670.13 of the Government Code is amended
6 to read:

7 8670.13. (a) The administrator shall periodically evaluate the
8 feasibility of requiring new technologies to aid prevention,
9 response, containment, cleanup, and wildlife rehabilitation.

10 (b) (1) On or before ~~July 1, 2016,~~ *January 1, 2017*, the
11 administrator shall submit a report to the Legislature, pursuant to
12 Section 9795, assessing the best achievable technology of
13 equipment for oil spill ~~prevention and response, including, but not~~
14 ~~limited to, prevention and response tugs, tractor tugs, salvage and~~
15 ~~marine firefighting tugs, oil spill skimmers and barges, and~~
16 ~~protective in-water boom equipment. The assessment shall include~~
17 ~~all of the following: prevention, preparedness, and response.~~

18 ~~(A) Evaluation of~~

19 ~~(2) The report shall evaluate studies of estimated recovery~~
20 ~~system potential as a methodology for rating equipment in~~
21 ~~comparison to effective daily recovery capacity.~~

22 ~~(B) If necessary, updating the methodology for rating equipment,~~
23 ~~such as oil containment, skimming, storage and oil and water~~
24 ~~separation technologies, and an explanation of why the chosen~~
25 ~~methodology provides the best achievable protection.~~

26 ~~(C) Evaluation of the most current oil spill and response~~
27 ~~equipment for increased capability, including, but not limited to,~~
28 ~~new generation, high-efficiency disc skimmers, including~~
29 ~~high-efficiency skimming NOFI Current Busters, or their~~
30 ~~equivalent, and Elastec grooved disc skimmers, or their equivalent.~~

31 ~~(D) Consideration of whether a purpose-built, prepositioned~~
32 ~~prevention and response tug with appropriate size, bollard pull,~~
33 ~~horsepower, propulsion, seakeeping, and maneuverability to meet~~
34 ~~Det Norske Veritas criteria for emergency towing would lead to~~
35 ~~increased capability to provide best achievable protection.~~

36 ~~(E) An independent vessel traffic risk assessment for all~~
37 ~~deepwater ports that may inform an area rescue towing plan for~~
38 ~~the approaches to the ports.~~

39 ~~(2) In conducting the assessment, the administrator shall consult~~
40 ~~the most recent peer-reviewed research on oil spill prevention and~~

1 ~~response, including, but not limited to, research performed by the~~
2 ~~Prince William Sound Regional Citizens' Advisory Council as~~
3 ~~well as estimated system recovery potential research done at~~
4 ~~Genwest Systems, Inc., and Spiltec.~~

5 (3) Pursuant to Section 10231.5, this subdivision is inoperative
6 on July 1, 2020.

7 (c) (1) ~~Based on~~ *Including, but not limited to*, the report
8 prepared pursuant to subdivision (b), the administrator shall update
9 regulations governing the adequacy of oil spill contingency plans
10 for best achievable technologies for oil spill prevention and
11 response no later than July 1, ~~2017~~. *2018*.

12 (2) The updated regulations shall enhance the capabilities for
13 prevention, response, containment, cleanup, and wildlife
14 rehabilitation.

15 (d) (1) *The administrator shall direct the Harbor Safety*
16 *Committees, established pursuant to Section 8670.23, to assess*
17 *the presence and capability of tugs within their respective*
18 *geographic areas of responsibility to provide emergency towing*
19 *of tank vessels and nontank vessels to arrest their drift or otherwise*
20 *guide emergency transit.*

21 (2) *The assessments for harbors in the San Francisco Bay area*
22 *and in Los Angeles-Long Beach area shall be initiated by May 1,*
23 *2016. The assessments for the other harbors shall be initiated by*
24 *January 1, 2020.*

25 (3) *The assessment shall consider, but not be limited to, data*
26 *from available United States Coast Guard Vessel Traffic Systems,*
27 *relevant incident and accident data, any relevant simulation*
28 *models, and identification of any transit areas where risks are*
29 *higher.*

30 (4) *The assessment shall consider the condition of tank and*
31 *nontank vessels calling on harbors, including the United States*
32 *Coast Guard's marine inspection program and port state control*
33 *program regarding risks due to a vessel's hull or engineering*
34 *material deficiencies, or inadequate crew training and*
35 *professionalism.*

36 SEC. 4. Section 8670.13.3 is added to the Government Code,
37 to read:

38 8670.13.3. If dispersants are used in response to an oil ~~spill,~~
39 *spill in state waters*, the administrator shall provide written
40 ~~justification for notification of their use to the Legislature within~~

1 three days of the use. *The administrator shall provide the*
2 *Legislature with written justification of their use, including copies*
3 *of key supporting documentation used by the federal on-scene*
4 *coordinator and the federal Regional Response Team as soon as*
5 *those material are released. Within two months of the use of*
6 ~~dispersants, dispersants in state waters,~~ the administrator shall
7 also provide a report to the Legislature on the effectiveness of the
8 dispersants used, including, but not limited to, ~~negative~~
9 ~~environmental impacts caused by those dispersants. results of any~~
10 ~~available monitoring data to determine whether the dispersant use~~
11 ~~resulted in overall environmental benefit or harm.~~ The written
12 ~~justification notification, justification,~~ and report shall be submitted
13 pursuant to Section 9795.

14 SEC. 5. Section 8670.28 of the Government Code is amended
15 to read:

16 8670.28. (a) The administrator, taking into consideration the
17 facility or vessel contingency plan requirements of the State Lands
18 Commission, the Office of the State Fire Marshal, the California
19 Coastal Commission, and other state and federal agencies, shall
20 adopt and implement regulations governing the adequacy of oil
21 spill contingency plans to be prepared and implemented under this
22 article. All regulations shall be developed in consultation with the
23 Oil Spill Technical Advisory Committee, and shall be consistent
24 with the California oil spill contingency plan and not in conflict
25 with the National Contingency Plan. The regulations shall provide
26 for the best achievable protection of waters and natural resources
27 of the state. The regulations shall permit the development,
28 application, and use of an oil spill contingency plan for similar
29 vessels, pipelines, terminals, and facilities within a single company
30 or organization, and across companies and organizations. The
31 regulations shall, at a minimum, ensure all of the following:

32 (1) All areas of state waters are at all times protected by
33 prevention, response, containment, and cleanup equipment and
34 operations.

35 (2) Standards set for response, containment, and cleanup
36 equipment and operations are maintained and regularly improved
37 to protect the resources of the state.

38 (3) All appropriate personnel employed by operators required
39 to have a contingency plan receive training in oil spill response
40 and cleanup equipment usage and operations.

1 (4) Each oil spill contingency plan provides for appropriate
2 financial or contractual arrangements for all necessary equipment
3 and services for the response, containment, and cleanup of a
4 reasonable worst case oil spill scenario for each area the plan
5 addresses.

6 (5) Each oil spill contingency plan demonstrates that all
7 protection measures are being taken to reduce the possibility of
8 an oil spill occurring as a result of the operation of the facility or
9 vessel. The protection measures shall include, but not be limited
10 to, response to disabled vessels and an identification of those
11 measures taken to comply with requirements of Division 7.8
12 (commencing with Section 8750) of the Public Resources Code.

13 (6) Each oil spill contingency plan identifies the types of
14 equipment that can be used, the location of the equipment, and the
15 time taken to deliver the equipment.

16 (7) Each facility, as determined by the administrator, conducts
17 a hazard and operability study to identify the hazards associated
18 with the operation of the facility, including the use of the facility
19 by vessels, due to operating error, equipment failure, and external
20 events. For the hazards identified in the hazard and operability
21 studies, the facility shall conduct an offsite consequence analysis
22 that, for the most likely hazards, assumes pessimistic water and
23 air dispersion and other adverse environmental conditions.

24 (8) Each oil spill contingency plan contains a list of contacts to
25 call in the event of a drill, threatened discharge of oil, or discharge
26 of oil.

27 (9) Each oil spill contingency plan identifies the measures to
28 be taken to protect the recreational and environmentally sensitive
29 areas that would be threatened by a reasonable worst case oil spill
30 scenario.

31 (10) Standards for determining a reasonable worst case oil spill.
32 However, for a nontank vessel, the reasonable worst case is a spill
33 of the total volume of the largest fuel tank on the nontank vessel.

34 (11) Each oil spill contingency plan specifies an agent for service
35 of process. The agent shall be located in this state.

36 (b) The regulations and guidelines adopted pursuant to this
37 section shall also include provisions to provide public review and
38 comment on submitted oil spill contingency plans.

39 (c) The regulations adopted pursuant to this section shall
40 specifically address the types of equipment that will be necessary,

the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

~~(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from review by the Office of Administrative Law.~~

~~(f) (1) The administrator shall develop and implement regulations and guidelines requiring operators to allow rapid response to an oil spill by vessels of opportunity, including, but not limited to, contracted fishing vessels and fishing crews, and provide the means for them to participate in regularly scheduled emergency drills, equipment deployment exercises, and training in areas that include all of the following:~~

~~(A) Shoreline protection.~~

~~(B) Towing boom and skimmers.~~

~~(C) Working with minibarges.~~

~~(D) Loading and unloading equipment from response barges.~~

~~(2) In developing the regulations, the administrator shall consider all vessel of opportunity programs, including, but not limited to, the fishing vessel training program funded and maintained by Alyeska's Ship Escort/Response Vessel System, with regard to training, liability, insurance, compensation, and post response vessel cleanup.~~

SEC. 6. Section 8670.55.1 is added to the Government Code, to read:

8670.55.1. (a) The committee shall convene a taskforce, including appropriate state and federal governmental

1 *representatives, nongovernmental organizations, oil spill response*
2 *organizations, and commercial fishing and other potential vessels*
3 *of opportunity, to evaluate and make recommendations regarding*
4 *the feasibility of using vessels of opportunity for oil spill response*
5 *in marine waters. The evaluation shall examine the following:*

6 *(1) Appropriate functions of vessels of opportunity during an*
7 *oil spill.*

8 *(2) Appropriate management of a vessels of opportunity spill*
9 *response program.*

10 *(3) Vessels of opportunity equipment, training, and technology*
11 *needs.*

12 *(4) Liability and insurance.*

13 *(5) Compensation.*

14 *(b) As part of the evaluation, the taskforce shall hold two public*
15 *meetings, one in southern California and one in northern*
16 *California, prior to making final recommendations.*

17 *(c) (1) On or before January 1, 2017, the committee shall*
18 *provide to the administrator and to the Legislature final*
19 *recommendations on whether vessels of opportunity should be*
20 *included in oil spill response planning.*

21 *(2) The recommendations provided to the Legislature shall be*
22 *provided pursuant to Section 9795.*

23 *(d) If appropriate, the administrator, by January 1, 2018, shall*
24 *update regulations to provide for inclusion of vessels of opportunity*
25 *in the oil spill prevention, response, and preparedness program.*

26 ~~SEC. 6:~~

27 *SEC. 7. Section 8670.67.5 of the Government Code is amended*
28 *to read:*

29 *8670.67.5. (a) Regardless of intent or negligence, any person*
30 *who causes or permits a spill shall be strictly liable civilly in*
31 *accordance with subdivision (b) or (c).*

32 *(b) A penalty may be administratively imposed by the*
33 *administrator in accordance with Section 8670.68 in an amount*
34 *not to exceed twenty dollars (\$20) per gallon for a spill. Except as*
35 *provided in subdivision (d), the amount of the penalty shall be*
36 *reduced for every gallon of released oil that is recovered and*
37 *properly disposed of in accordance with applicable law.*

38 *(c) Whenever the release of oil resulted from gross negligence*
39 *or reckless conduct, the administrator shall, in accordance with*
40 *Section 8670.68, impose a penalty in an amount not to exceed*

1 sixty dollars (\$60) per gallon for a spill. ~~Except as provided in~~
2 ~~subdivision (d), the amount of the penalty shall be reduced for~~
3 ~~every gallon of released oil that is recovered and properly disposed~~
4 ~~of in accordance with applicable law.~~

5 ~~(d) (1) For a spill of greater than 500 gallons, the penalty~~
6 ~~assessed pursuant to subdivision (b) or (c) shall only be reduced~~
7 ~~for every gallon of released oil that is recovered and properly~~
8 ~~disposed of in accordance with applicable law within two weeks~~
9 ~~of the start of the spill.~~

10 ~~(2) Notwithstanding Section 8670.69.7, any increase in the~~
11 ~~amount of a penalty assessed for an inland spill resulting from the~~
12 ~~operation of paragraph (1) shall be deposited in the Environmental~~
13 ~~Enhancement Fund pursuant to Section 8670.70.~~

14 ~~(e) The administrator shall adopt regulations governing the~~
15 ~~method for determining the amount of oil that is cleaned up.~~